In the Matter of RAY NICHOLS, INC. *and* LOCAL NO. 45–B, UNITED FURNITURE, CARPET, LINOLEUM AND AWNING WORKERS UNION

Case No. C–871.—Decided October 3, 1939

Venetian Blind Manufacturing Industry—Employer: out of business at time of hearing—*Interference, Restraint, and Coercion:* anti-union statements including warnings against organization of union and threats to close business should the employees do so—*Discrimination:* discharges, for union activity—*Unit Appropriate for Collective Bargaining:* production employees exclusive of guidance men and outside-installation workers—*Representatives:* proof of choice: designation of union—*Collective Bargaining:* refusal to bargain: since respondent is out of business it is not affirmatively ordered to bargain with the union upon request—*Reinstatement Ordered:* discharged employees in event respondent has or does in the future reenter the same or a similar business in which discharged employees are qualified to work—*Back Pay:* awarded discharged employees: from date of discharge to date respondent went out of business: also in event respondent has reentered business from date of reentry to date of offer of employment.

Mr. Mark Lauter, for the Board.

Schanzer, Radest & Levine, by *Mr. Joseph Radest*, of New York City, for the respondent.

Mr. Ben Law, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Local No. 45–B, Upholsterers, Furniture, Carpet, Linoleum and Awning Workers Union, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint dated May 12, 1938, against Ray Nichols, Inc., herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearings, were duly served upon the respondent and the Union.

The complaint alleged in substance that the respondent had (a) discharged and refused to reinstate certain named employees because they had joined and assisted the Union and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; (b) urged and warned its employees not to become or remain members of the Union; and (c) on or about November 15, 1937, and at all times thereafter, refused to bargain collectively with the Union as the representative of its employees in an appropriate unit.

On May 20, 1938, the respondent filed its answer to the complaint, denying that more than 25 per cent of the materials and products used by the respondent have at any time been purchased, delivered, or transported in interstate commerce and denying that it had engaged in the alleged unfair labor practices.

Pursuant to notice, a hearing was held in New York City on June 27, 28, and 29, 1938, before I. L. Broadwin, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the close of the Board's case and again at the close of the hearing the respondent moved to dismiss the complaint on the ground that it was unsupported by the evidence and that affirmative proof adduced at the hearing showed that there was no refusal to bargain and that the discharges were justified. Ruling on these motions was reserved by the Trial Examiner until filing of his Intermediate Report, in which they were denied except in so far as they related to that part of the complaint alleging that Stanley Borodin was discharged for union activities. As to Borodin the Trial Examiner granted the respondent's motion to dismiss the complaint and found there was sufficient evidence that Borodin stole from the respondent to justify his discharge even though his union activities may have made his continued employment still less desirable to the respondent. At the close of the hearing counsel for the Board moved to conform the complaint to the proof. The motion was granted. During the course of the hearing the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings of the Trial Examiner, and save where inconsistent with what is set forth below, finds that no prejudicial errors were committed. These rulings, so limited, are hereby affirmed.

On August 27, 1938, the Trial Examiner issued his Intermediate Report, copies of which were duly served on all the parties, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1),

(3), and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist therefrom, offer full reinstatement with back pay to three of the individuals named in the complaint and, upon request, bargain collectively with the Union.

Exceptions to the Intermediate Report and a request for oral argument before the Board were thereafter filed by the respondent. On April 12, 1939, copies of a notice of hearing for oral argument were sent by registered mail to all the parties. The copy directed to the respondent was returned undelivered. An investigation made by the Regional Director for the Second Region revealed that the whereabouts of Mr. Nichols, president and secretary, and Mrs. Nichols, vice president and treasurer of the respondent, was not known to the Union or to the respondent's attorney, who was served with notice of hearing. The respondent did not appear at the time and place set by the Board for oral argument. The Union waived oral argument.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

Ray Nichols, Inc., a New York corporation, had its principal office and plant in New York City and engaged until June 13, 1938, in the manufacture, sale, and installation of venetian blinds. Ray Nichols is president and secretary and his wife is vice president and treasurer. The gross volume of the respondent's purchases of materials in States other than New York during 1937 was about $31,580 and represented 44 per cent of all materials purchased. The gross volume of the respondent's sales shipped to points outside of New York in the same period was about $30,237 or 44 per cent of the total sales. The respondent, through its counsel, stipulated at the hearing that it was engaged in interstate commerce within the meaning of the Act.

After November 15, 1937, the date of the discharges complained of, the respondent continued production until December 24, 1937, when the factory was closed. From that date until March 18, 1938, only two salesmen were employed. On March 18, 1938, the respondent reopened its factory and resumed production until June 13, 1938, when it was again closed. At the hearing Ray Nichols testified that, "regardless of the ruling of the Board in this matter," he was permanently out of the venetian-blind business. The corporation had not been dissolved at the time of the hearing. Nichols had by that time given notice of wish to terminate the respondent's lease on 644 Broadway, New York City, where the plant was located, and had laid off the remaining employees.

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, Local Union No. 45–B, is a labor organization admitting to its membership production employees of the respondent, excluding clerical, supervisory, and outside-installation employees. Since January 1, 1938, it has been affiliated with the Committee for Industrial Organization. Prior to January 1, 1938, the Union was known as Local No. 45–B, Upholsterers, Furniture, Carpet, Linoleum and Awning Workers Union and was affiliated with the American Federation of Labor. Although its name and affiliation were changed on the date given, the Union retained the same offices, assets, location, and membership.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

On November 5, 1937, during lunch hour, Lawrence Ross, an organizer for the Union, met and spoke to some of the respondent's employees in the hall of 644 Broadway, New York City, on the second floor of which the respondent's plant is located. He returned to the same place on November 8, 1937, at which time he spoke to Stanley Borodin, Tony De Servio, Charles Maleski, James Ricardi, and Anthony Roman, certain of the respondent's employees. He explained to them that the Union was starting a drive to organize the entire venetian-blind industry so as to secure a 40-hour week, time and a half for overtime, and security in their jobs. According to Ross, the men "thought the Union was a swell idea and would like to sign up," but they were afraid that, "if Mr. and Mrs. Nichols ever found out, it meant their jobs, and jobs weren't easy to get these days." Ross did tell the men that he wanted an opportunity to talk to all of them at the union headquarters. He further stated that men working as foremen or supervisors were not wanted. It appears that the other employees regarded Bob Semel, Fred Osipowitz, and Herbert Farrant as foremen or supervisory employees. Ross also told the men present that Rongo and D'Arcy could not be taken into the Union since they were outside-installation workers over whom the Union did not take jurisdiction.

On November 10, 1937, Ross met and spoke with some of the employees at a restaurant opposite the respondent's plant. The men saw Osipowitz across the street and Ross crossed to engage him in conversation concerning organization in the plant. Rongo joined them and said to Ross, "You better not bother about the Union around here. You had better get away and not talk to anybody or we will move you away." That evening seven of the employees met Ross in

the same restaurant. Ross explained the protection afforded by the National Labor Relations Act; application cards for membership were passed around; and Charles Maleski, Tony De Servio, Frank McNevich, Stanley Borodin, and Anthony Roman signed.

At a second meeting in union headquarters held November 12, 1937, James Riccardi and Joseph Fountalle signed application cards. The seven men who had applied for membership then voted to have the Union represent them and Ross announced that he would see Mr. Nichols on the following day.

Events of November 15, 1937, are of particular significance. Early in the morning of that day Ross and Paul Green, a business representative of the Union, called at the respondent's place of business. Mr. Nichols was in conference and unable to see them but Mrs. Nichols came in after a short time. Ross and Green told her that they were from the American Federation of Labor, that they represented a majority of the employees in the plant and wished to discuss the question of an agreement covering working conditions of the employees. The two union representatives testified that Mrs. Nichols replied that none of the employees had spoken to her about signing union cards, that she did not believe they had signed, that they ran their shop in an "American manner," that Mr. Nichols had fought as a good American patriot in France and knew what was good for the workers in the shop, and that nobody could come in from the outside and tell them how to run the shop. Mrs. Nichols' account of the November 15, 1937, visit differed from that of the union representatives. She testified at the hearing that she told the two men that she and her husband had had previous friendly relations with the American Federation of Labor and that they could see Mr. Nichols later in the day. Ross and Green left. In the light of the subsequent conduct of the respondent, set out below, we find that Mrs. Nichols made the statements ascribed to her above by Ross and Green.

Borodin testified at the hearing that sometime in the morning of November 15, 1937, Farrant, Mrs. Nichols' brother, came over to where he was working and told Borodin that if he had signed a union card he should get it back from the Union and Farrant would see that he did not lose his job. Borodin further testified that during the same day Mrs. Nichols told him that before she would recognize any union she would close up her plant. At about 4:30 p. m. on November 15, 1937, Maleski, De Servio, McNevich, and Borodin were called to the office and discharged by Mr. Nichols who gave them no reasons for his action. We find, as set forth more fully below, that the four named employees were discharged because they had joined and assisted the Union.

That evening a union meeting was held. Ross testified that the men told him that Maleski, De Servio, McNevich, and Borodin had been discharged because it was found out that they had joined the Union. Riccardi said, "I feel like a heel going back to work tomorrow and these fellows were fired for Union activity and I did the same thing they did." Tony Roman expressed the same sentiments and suggested, "Shall we walk out?" Ross and Green advised Riccardi and Roman to stay on the job and announced that they would see Mr. and Mrs. Nichols soon about reinstating the four discharged men.

Despite the reported statements above, Riccardi and Roman signed a statement prepared at the direction of either Mr. or Mrs. Nichols, dated November 22, 1937, and signed by all the respondent's employees as of that date, stating in part as follows:

> Today, November 22nd, voluntarily came Anthony Roman, James Riccardi, and in the presence of Miss M. A. Cole, Miss Sara Arlette, William D'arcy and E. P. Nichols said that they have been requested to sign a card for application to some association which they did, and at that time they had not talked the matter over with other men and were unaware of the facts concerning same, and they were under the impression due to their ignorance of the matter that it was sort of a get-together social for our men workers. They claim that they do not even know the name of the association or its address. However, after talking over this matter with other workers and freinds they claim they have no desire to join and want to remain here to work under the condition which they have found agreeable.

In view of the circumstances under which this statement was prepared and signed, of the part taken by Riccardi and Roman at the union meeting of November 15, 1937, and the fact that both men signed cards clearly designating the Union as their collective bargaining agency in all matters pertaining to rates of pay, wages, hours, and conditions of employment, it seems highly improbable that the statement represents the true wishes of Riccardi and Roman. It appears rather, and we find, that they signed it under pressure by the respondent and in hopes of retaining their jobs after it seemed to them that their Union had been successfully broken by the discharges mentioned.

Summing up, we find that the respondent, by anti-union statements, coercive acts and threats of its officials and supervisory employees, by its conduct when the Union sought to have it enter into bargaining negotiations, and by the discharge of four employees for union activity, has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations to bargain collectively through represent-

atives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

B. *The discriminatory discharges*

The complaint alleges that Maleski, De Servio, McNevich, and Borodin were discharged because they joined and assisted the Union. The respondent's answer denies this and alleges as grounds for their discharge that Maleski was loafing on his job and failed to attend to his duties; that De Servio and McNevich were temporary employees, inexperienced and inefficient; and that Borodin had been stealing merchandise from the respondent and absented himself from his duties without permission, had become inefficient, careless, and neglectful about his duties, smoked in violation of fire-department rules, and had made a false statement with respect to his age. The following evidence was adduced with respect to each of these men:

Charles Maleski entered the respondent's employ in December 1936, in its painting department at $12.00 a week. He worked in various departments up to the time of his discharge on November 15, 1937, at which time he was receiving $14.40 a week. He signed the union designation and application card on November 10, 1937. Maleski testified that on the afternoon before he was discharged he had a conversation with Rongo and Osipowitz in which Rongo told him that the Union was no good, "that all unions are gyps," and that if Ross, the union organizer, came around, "we should not bother with him." Ray Nichols testified that Maleski had, during the week before November 15, 1937, ruined 15 router drills through careless work, that he had broken a washbasin and that his work never had been really satisfactory. Maleski admitted having broken the washbasin some time before but denied having ruined the router drills. Mrs. Nichols, who acted as factory manager and apparently had much greater opportunity to observe the men at work than did Mr. Nichols, testified that the first time she found Maleski's work unsatisfactory was during the week preceding his discharge. She testified as follows:

> Q. What was there that was unsatisfactory about his work?
>
> A. (By Mrs. Nichols.) The manner in which he did it—the manner in which he conducted himself, the manner in which he carried the materials in a careless way and threw them into the racks and very arrogant.

These grounds for dissatisfaction are not persuasive, especially in the light of the fact that Maleski had been in the respondent's employ since December 1936, and that the first dissatisfaction with his

work occurred during the week that Ross was active in attempting to organize the respondent's employees. Maleski testified that he wants his job back.

Tony De Servio and *Frank McNevich* entered the respondent's employ on November 5, 1937, working at a paint machine at a salary of $14.40 weekly. Both men were recommended to Mr. Nichols by Stanley Borodin. De Servio and McNevich signed union application and designation cards on November 10, 1937, and were discharged on November 15, 1937. De Servio testified that on the morning before they were discharged Mr. Nichols came over to where he and Semel were working and said to them that if the men were going to join the Union he would shut down the plant. Shortly afterward, Borodin came over and asked De Servio privately if he was going to back out of the Union. De Servio replied that he was sticking with it.

Mr. Nichols testified that the reasons for discharging De Servio and McNevich were that they were inexperienced, their work was poor, they were only temporary employees and they had ruined a certain paint job. With regard to Mr. Nichols' last reason, it appears that certain blinds were given the two men allegedly to be varnished. These they painted ivory. Certain other blinds were given them allegedly to be painted ivory. These they varnished. De Servio testified that he had received and followed Semel's instructions on the two jobs and that if a mistake was made the responsibility was Semel's. Semel, on the other hand, testified that the mistake was De Servio's. It does appear that Semel laid out the work and after it was completed he did not notify either De Servio or McNevich that the blinds had been improperly painted. Under the circumstances we find that De Servio and McNevich were not at fault.

With regard to Mr. Nichols' charges that De Servio and McNevich were inexperienced and that their work was poor it appears that until the time of the hearing no one had told them they were not performing their jobs satisfactorily.

It is not clear from the record whether or not the two men were told that their jobs were temporary. Mrs. Nichols testified that she told them when they were hired that "if they proved their ability and business kept up we would keep them as long as we could." Whether De Servio and McNevich were told that their jobs were temporary is immaterial if they were discharged for having joined the Union and in order to discourage membership in that organization. De Servio testified that he wants his job back.

Stanley Borodin entered the respondent's employ on September 9, 1936, in the assembly department at $14.40 per week. He worked

in various other departments and at the time of his discharge on November 15, 1937, he was earning $16.00 per week. He signed the union application and designation card on November 10, 1937. The respondent admitted that his work had been satisfactory up until the last week. The charge by Mr. Nichols that he smoked in violation of fire-department rules is without substance in view of the fact that the smoking took place in the washroom, that other employees did the same thing, and that Nichols permitted smoking in the washroom during lunch hour.

With respect to the respondent's allegations that he had been stealing, Borodin admitted on cross-examination that he recalled taking some wood from the plant without permission by way of the back elevator; that he knew of complaints about employees using the back freight elevator, and that employees were not allowed to take wood without permission. Semel testified that on November 13, 1937, he observed Borodin pass packages out of the fire door to somebody in the hall and that some time prior to November 15, 1937, he saw him take paint through the back door. About 2 months prior to the discharge, Semel saw Borodin take four or five paint machine rollers (round brass moulds) and pass them out of the back door. Semel testified that he told Borodin to bring them back because Mr. Nichols would miss them and that Borodin did return two of them. Not long before the discharges Mrs. Nichols confronted Borodin with charges that he had been stealing and warned him against continuing to do so.

Despite the evidence of Borodin's stealing, it is clear that the respondent trusted him until shortly before his discharge. Mr. and Mrs. Nichols frequently gave him checks and cash to take to the bank. It was on his recommendation that the respondent hired De Servio and McNevich. It is also clear that Borodin was a leader in organizing the employees. In view of the fact that his union activity, the respondent's sudden dissatisfaction with his work and morals, anti-union statements expressed by the respondent's officials and supervisory employees to him, and his discharge all followed in rapid succession, it is apparent, and we find, that Borodin's discharge was occasioned by the respondent's desire to discourage labor organization.

After November 15, 1937, the respondent increased the pay of all remaining employees in the plant 5 cents an hour, effective the week following November 15, 1937. There was overtime work after that date.

All the evidence in this case presents an integrated picture. First, although warned against doing so by supervisory and confidential employees, the production workers organized. Then the respondent, while continuing to express an anti-union attitude, suddenly de-

veloped an alleged dissatisfaction with the work and demeanor of those employees who had first joined the Union. Shortly thereafter, after the respondent had been requested to bargain collectively by the Union, it summarily discharged a majority of its organized employees and raised the wages of other employees.

Upon all the evidence we find that Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin were discharged because they joined and assisted the Union, and that by such discharges the respondent has discriminated in regard to their hire and tenure of employment, and has thereby discouraged membership in the Union. We also find that by such action the respondent has interfered with, restrained, and coerced its employees in the rights guaranteed under Section 7 of the Act.

C. *The refusal to bargain collectively*

1. The appropriate unit

At the hearing the Union asked for the exclusion of outside-installation workers and "guidance men" from the unit of production employees. Of employees listed on the November 11, 1937, and November 18, 1937, pay rolls, William D'Arcy and James Rongo were outside-installation workers and Robert Semel, Fred Osipowitz, and Herbert Farrant were "guidance men." D'Arcy and Rongo installed blinds at the point of use. They did little if any work in the plant. The Union does not admit them to membership. We shall exclude them from the unit. Other employees regarded Semel, Osipowitz, and Farrant as foremen or supervisory employees. At one time a sign had been posted by the respondent in the plant announcing that Semel was foreman of the paint department, Farrant was foreman of the assembly department, and Osipowitz was foreman of the cutting department. After the sign was up for about a week the respondent removed it and announced that these three men would henceforth be "guidance men" in their respective departments. The change in name from foremen to "guidance men" caused no apparent change in their duties or positions. They continued to direct and supervise the work of other employees. Their salaries had been raised when they were appointed foremen and had not subsequently been reduced. That the three "guidance men" were at least confidential employees whose interests were closely allied with the management seems clear. We will accordingly exclude "guidance men" from the unit.

We find that the production employees of Ray Nichols, Inc., exclusive of "guidance men" and outside-installation workers, constitute a unit appropriate for the purposes of collective bargaining and that

said unit insures to the employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

As of the respondent's pay roll for November 11, 1937, employees within the appropriate unit were Stanley Borodin, Tony De Servio, Joseph Fountalle, Charles Maleski, Thelma Morton, Anthony Roman, James Riccardi, and Frank McNevich. Joseph Fountalle resigned during the following week. By November 12, 1937, all of the above employees with the exception of Thelma Morton had designated the Union as their bargaining representative. Thelma Morton resigned on November 14, 1937.

We find that on November 12, 1937, and at all times thereafter, the Union was the duly designated representative of a majority of the employees of the respondent in the appropriate unit. Pursuant to Section 9 (a) of the Act the Union was, therefore, the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

As has been stated, Ross and Green, the union representatives, called at the respondent's office on the morning of November 15, 1937, asked to see Mr. Nichols, the president, were told that he was not in, and then spoke to Mrs. Nichols, vice president and treasurer. They told her that they represented a majority of the employees in the plant and that they wanted to discuss the question of a collective bargaining agreement. As noted above, Mrs. Nichols refused to bargain, saying that no one could come in from the outside to tell her and Mr. Nichols how to run the shop. That same day Maleski, De Servio, McNevich, and Borodin were discharged. On November 16, 1937, Ross and Green tried to get in touch with Mr. Nichols and finally reached him that evening. An appointment was made for the following morning.

Ross and Green went to the respondent's plant on the morning of November 17, 1937, and spoke to both Mr. and Mrs. Nichols. Green announced that he and Ross had come representing the workers to talk about an agreement and to request reinstatement of the four employees discharged 2 days before. Green gave Nichols the Union's business card to identify himself. Testimony concerning the conversation occurring at this interview is highly contradictory. Ross and Green stated that Mr. Nichols told them that he was not in-

terested, that the venetian-blind industry was not his main source of income, that he had other business interests, that he did not want to bargain collectively, and that that was all there was to it. They testified further that Nichols said he was not interested in discussing the discharges because he had good reasons for firing the four men on November 15, 1937, and that Mrs. Nichols told them that her people came from Kentucky and that they would fight on the drop of a hat and "by God they would fight the Union." Mr. and Mrs. Nichols, on the other hand, testified that they stated their willingness to bargain if their employees had actually joined the Union, but that they did not believe this to be the case. Mr. Nichols asked Green who had joined and Green refused to tell him saying that the identity of the members was confidential. Mrs. Nichols testified that she said to the union representatives, "If you thought for one minute, that we did not want that shop Union, don't you think we could prevent it?" In view of the respondent's course of conduct during the entire period here involved, we find that the account of the November 17, 1937, interview rendered by Ross and Green is substantially correct and that Mr. and Mrs. Nichols did make the statements ascribed to them by Ross and Green.

Before the interview ended Mr. Nichols offered to go into the shop then and there and take a vote among the employees to determine whether they wanted to be represented by the Union. It seems certain that a vote taken pursuant to Mr. Nichols' offer would not as a practical matter have expressed the free choice of even the men then employed. Since Maleski, De Servio, McNevich, and Borodin had been wrongfully discharged by the respondent 2 days previously for their union activity their employee status and right to vote on the question of union affiliation remained after November 15, 1937. A determination on the terms offered by Mr. Nichols would have deprived them of that right. In any event, under the circumstances the results of an election conducted under the surveillance of Mr. Nichols would not have represented the free choice of the employees.

In view of the respondent's discharge of the four employees who had first joined the Union, its previous anti-union statements to them and others, its subsequent procurement of a renunciation of the Union from the two members it did not discharge, and the fact that its supervisory employees had witnessed certain of the Union's successful organizational efforts, we find that the respondent's refusal to bargain was not based upon doubt as to the Union's majority representation but rather upon the respondent's antipathy to labor organization.

We find that the respondent on November 17, 1937, and at all times thereafter, refused to bargain collectively with the Union as the

representative of its employees in the appropriate unit with respect to wages, hours of employment, and other conditions of employment.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from further engaging in such practices. We shall also order the respondent to take certain affirmative action which we deem necessary to effectuate the policies of the Act.

We have found that the respondent discriminatorily discharged Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin on November 15, 1937. We shall order the respondent to make the said Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin whole for any loss of pay they have suffered by reason of their discharges by payment to each of them of a sum of money equal to the amount which he would normally have earned as wages from the date of his discharge to June 13, 1938, the date upon which the respondent closed its plant, less his net earnings [1] during such period. We shall further order the respondent, in the event it has reentered the business of manufacture, sale, and installation of venetian blinds, or any similar business in which Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin are qualified to work, to offer immediate reinstatement to the said Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges and with back pay to each less his net earnings, from the time the respondent

[1] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge, and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

reopened such business to the time of the offer of reinstatement; or, in the event that the respondent shall in the future reenter the business of manufacture, sale, and installation of venetian blinds or any similar business in which the said Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin are qualified to work, to offer at that time reinstatement to the said men to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Local No. 45–B, Upholsterers, Furniture, Carpet, Linoleum and Awning Workers Union, known since January 1, 1938, as United Furniture Workers of America, Local Union No. 45–B, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The production employees of Ray Nichols, Inc., exclusive of "guidance men" and outside-installation workers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Local No. 45–B, Upholsterers, Furniture, Carpet, Linoleum and Awning Workers Union, known since January 1, 1938, as United Furniture Workers of America, Local Union No. 45–B, was, on November 12, 1937, and at all times since has been, the exclusive representative of all such employees for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with the Union on November 17, 1937, and at all times thereafter, as the exclusive representative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin and thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Ray Nichols, Inc., or its agents, successors, or assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Furniture Workers of America, Local Union No. 45–B, or any other labor organization of its employees by discharging any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act;

(c) Refusing to bargain collectively with the exclusive representative of its employees in an appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment, in the event the respondent or its agents, successors, or assigns has reentered, or does in the future reenter, the business of manufacture, distribution, and sale of venetian blinds or any substantially similar business.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin for any loss of pay they have suffered by reason of their discharges by payment to each of them of a sum of money equal to the amount which he would normally have earned as wages from the date of his discharge to June 13, 1938, the date upon which the respondent closed its plant, less his net earnings during such period; deducting, however, from the amount otherwise due each said employee, monies received by him during said period for work performed on Federal, State, county, municipal, or other work-relief projects, and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said projects;

(b) In the event the respondent, or its agents, successors, or assigns has reentered the business of manufacture, sale, and installation of venetian blinds or any substantially similar business in which

Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin are qualified to work, offer immediate reinstatement to the said Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, and, in such event, make whole Charles Maleski, Tony De Servio, Frank McNevich, and Stanley Borodin for any loss of pay they may have suffered by reason of the respondent's failure to reinstate them on the date of reentering business by payment to each of them of a sum of money equal to the amount which he would have earned as wages from that date to the time of the offer of reinstatement, less his net earnings, deducting, however, from the amount otherwise due each said employee monies received by him during said period for work performed on Federal, State, county, municipal, or other work-relief projects, and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said projects;

(c) In the event the respondent, or its agents, successors, or assigns shall in the future reenter the business of manufacture, sale, and installation of venetian blinds or any similar business in which Charles Maleski, Tony De Servio, and Frank McNevich are qualified to work, offer at that time reinstatement to the said men to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(d) In the event the respondent, or its agents, successors, or assigns, has reentered its former business or a substantially similar business, immediately post notices in conspicuous places throughout its plants, buildings, and other places of employment, and maintain such notices for a period of at least ninety (90) consecutive days, stating that the respondent will cease and desist in the manner set forth in 1 (a), (b), and (c), and that it will take the affirmative action set forth in 2 (a), (b), and (c) of this Order; or in the event the respondent, or its agents, successors, or assigns shall in the future reenter its former business or a substantially similar business, at that time immediately post such notices and keep them posted for the same period;

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

MR. WILLIAM M. LEISERSON took no part in the consideration of the above Decision and Order.